

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Juvenile Court Act of 1987 is amended by
5 changing Sections 5-410 and 5-740 as follows:

6 (705 ILCS 405/5-410)

7 Sec. 5-410. Non-secure custody or detention.

8 (1) Any minor arrested or taken into custody pursuant to
9 this Act who requires care away from his or her home but who
10 does not require secured custody pursuant to paragraph (a) of
11 subsection (2) ~~physical restriction~~ shall be given temporary
12 care in a foster family home or other shelter facility
13 designated by the court.

14 (2) (a) Any minor 10 years of age or older arrested
15 pursuant to this Act where there is probable cause to believe
16 that the minor is a delinquent minor and that (i) secured
17 custody is a matter of immediate and urgent necessity for the
18 protection of the minor or of the person or property of
19 another, (ii) the minor is likely to flee the jurisdiction of
20 the court, or (iii) the minor was taken into custody under a
21 warrant, may be kept or detained in an authorized detention
22 facility. No minor under 12 years of age shall be detained in a
23 county jail or a municipal lockup for more than 6 hours. Where

1 a court orders a minor to be kept or detained in a facility
2 authorized for juvenile detention in accordance with this Act
3 and it appears from the record that, notwithstanding the order
4 of detention, removal of the minor from the minor's home may
5 also be in the minor's best interest, the court shall further
6 determine whether the removal is, in fact, in the best
7 interests of the minor, consistent with paragraphs (a-5) and
8 (a-10) of this subsection (2) and shall include such findings
9 on the initial court order authorizing the detention.

10 (a-5) For any minor determined to need care away from home
11 in foster care or shelter care, but who does not require
12 secured custody pursuant to paragraph (a) of this subsection
13 (2) the court shall order, in accordance with subsection (1) of
14 this Section, consistent with the health, safety, and best
15 interests of the minor, the removal because the minor's home
16 cannot provide the quality of care and level of support and
17 supervision the minor needs at the time. Removal from the home
18 may be in the minor's and community's best interest for any of
19 the following reasons: (i) the minor is without the care
20 necessary for the minor's well-being through no fault or lack
21 of concern by a parent, guardian, custodian, or other person,
22 (ii) the minor has no parent, guardian, custodian, or other
23 person able to return the minor to the court when required, or
24 (iii) for the protection of the minor.

25 (a-10) For any minor who does not require secured custody
26 pursuant to paragraph (a) of this subsection (2) and who is

1 determined to need care away from home in foster care or
2 shelter care the court, in accordance with paragraph (a) of
3 this subsection (2), shall further find that reasonable efforts
4 have been made or that, consistent with the health, safety, and
5 best interests of the minor and the community, no efforts
6 reasonably can be made to prevent or eliminate the necessity of
7 removal of the minor from his or her home. The court shall
8 require documentation from the Probation Department as to the
9 reasonable efforts that were made to prevent or eliminate the
10 necessity of removal of the minor from his or her home or the
11 reasons why no efforts reasonably could be made to prevent or
12 eliminate the necessity of removal.

13 In making its findings that it is consistent with the
14 health, safety, and best interests of the minor and the
15 community to prescribe shelter care, the court shall state in
16 writing: (i) the factual basis supporting its findings
17 concerning the immediate and urgent necessity for the
18 protection of the minor, (ii) the factual basis for the finding
19 of the minor's and community's best interests, and (iii) the
20 factual basis supporting its findings that reasonable efforts
21 were made to prevent or eliminate the removal of the minor from
22 his or her home or that no efforts reasonably could be made to
23 prevent or eliminate the removal of the minor from his or her
24 home.

25 Once the court determines that the minor requires care away
26 from home for the protection of the minor and places the minor

1 in a shelter care facility or foster care, the minor shall not
2 be returned to the parent, custodian, or guardian until the
3 court finds that such placement is no longer necessary for the
4 protection of the minor.

5 (a-15) If the court determines that the minor requires care
6 away from home for the protection of the minor and places the
7 minor in a shelter care facility, there shall be a rebuttable
8 presumption that such findings comply with the factors outlined
9 in paragraphs (a-5) and (a-10) of this subsection (2).

10 (b) The written authorization of the probation officer or
11 detention officer (or other public officer designated by the
12 court in a county having 3,000,000 or more inhabitants)
13 constitutes authority for the superintendent of any juvenile
14 detention home to detain and keep a minor for up to 40 hours,
15 excluding Saturdays, Sundays and court-designated holidays.
16 These records shall be available to the same persons and
17 pursuant to the same conditions as are law enforcement records
18 as provided in Section 5-905.

19 (b-4) The consultation required by subsection (b-5) shall
20 not be applicable if the probation officer or detention officer
21 (or other public officer designated by the court in a county
22 having 3,000,000 or more inhabitants) utilizes a scorable
23 detention screening instrument, which has been developed with
24 input by the State's Attorney, to determine whether a minor
25 should be detained, however, subsection (b-5) shall still be
26 applicable where no such screening instrument is used or where

1 the probation officer, detention officer (or other public
2 officer designated by the court in a county having 3,000,000 or
3 more inhabitants) deviates from the screening instrument.

4 (b-5) Subject to the provisions of subsection (b-4), if a
5 probation officer or detention officer (or other public officer
6 designated by the court in a county having 3,000,000 or more
7 inhabitants) does not intend to detain a minor for an offense
8 which constitutes one of the following offenses he or she shall
9 consult with the State's Attorney's Office prior to the release
10 of the minor: first degree murder, second degree murder,
11 involuntary manslaughter, criminal sexual assault, aggravated
12 criminal sexual assault, aggravated battery with a firearm,
13 aggravated or heinous battery involving permanent disability
14 or disfigurement or great bodily harm, robbery, aggravated
15 robbery, armed robbery, vehicular hijacking, aggravated
16 vehicular hijacking, vehicular invasion, arson, aggravated
17 arson, kidnapping, aggravated kidnapping, home invasion,
18 burglary, or residential burglary.

19 (c) Except as otherwise provided in paragraph (a), (d), or
20 (e), no minor shall be detained in a county jail or municipal
21 lockup for more than 12 hours, unless the offense is a crime of
22 violence in which case the minor may be detained up to 24
23 hours. For the purpose of this paragraph, "crime of violence"
24 has the meaning ascribed to it in Section 1-10 of the
25 Alcoholism and Other Drug Abuse and Dependency Act.

26 (i) The period of detention is deemed to have begun

1 once the minor has been placed in a locked room or cell or
2 handcuffed to a stationary object in a building housing a
3 county jail or municipal lockup. Time spent transporting a
4 minor is not considered to be time in detention or secure
5 custody.

6 (ii) Any minor so confined shall be under periodic
7 supervision and shall not be permitted to come into or
8 remain in contact with adults in custody in the building.

9 (iii) Upon placement in secure custody in a jail or
10 lockup, the minor shall be informed of the purpose of the
11 detention, the time it is expected to last and the fact
12 that it cannot exceed the time specified under this Act.

13 (iv) A log shall be kept which shows the offense which
14 is the basis for the detention, the reasons and
15 circumstances for the decision to detain and the length of
16 time the minor was in detention.

17 (v) Violation of the time limit on detention in a
18 county jail or municipal lockup shall not, in and of
19 itself, render inadmissible evidence obtained as a result
20 of the violation of this time limit. Minors under 17 years
21 of age shall be kept separate from confined adults and may
22 not at any time be kept in the same cell, room or yard with
23 adults confined pursuant to criminal law. Persons 17 years
24 of age and older who have a petition of delinquency filed
25 against them may be confined in an adult detention
26 facility. In making a determination whether to confine a

1 person 17 years of age or older who has a petition of
2 delinquency filed against the person, these factors, among
3 other matters, shall be considered:

4 (A) The age of the person;

5 (B) Any previous delinquent or criminal history of
6 the person;

7 (C) Any previous abuse or neglect history of the
8 person; and

9 (D) Any mental health or educational history of the
10 person, or both.

11 (d) (i) If a minor 12 years of age or older is confined in a
12 county jail in a county with a population below 3,000,000
13 inhabitants, then the minor's confinement shall be implemented
14 in such a manner that there will be no contact by sight, sound
15 or otherwise between the minor and adult prisoners. Minors 12
16 years of age or older must be kept separate from confined
17 adults and may not at any time be kept in the same cell, room,
18 or yard with confined adults. This paragraph (d) (i) shall only
19 apply to confinement pending an adjudicatory hearing and shall
20 not exceed 40 hours, excluding Saturdays, Sundays and court
21 designated holidays. To accept or hold minors during this time
22 period, county jails shall comply with all monitoring standards
23 promulgated by the Department of Corrections and training
24 standards approved by the Illinois Law Enforcement Training
25 Standards Board.

26 (ii) To accept or hold minors, 12 years of age or older,

1 after the time period prescribed in paragraph (d)(i) of this
2 subsection (2) of this Section but not exceeding 7 days
3 including Saturdays, Sundays and holidays pending an
4 adjudicatory hearing, county jails shall comply with all
5 temporary detention standards promulgated by the Department of
6 Corrections and training standards approved by the Illinois Law
7 Enforcement Training Standards Board.

8 (iii) To accept or hold minors 12 years of age or older,
9 after the time period prescribed in paragraphs (d)(i) and
10 (d)(ii) of this subsection (2) of this Section, county jails
11 shall comply with all programmatic and training standards for
12 juvenile detention homes promulgated by the Department of
13 Corrections.

14 (e) When a minor who is at least 15 years of age is
15 prosecuted under the criminal laws of this State, the court may
16 enter an order directing that the juvenile be confined in the
17 county jail. However, any juvenile confined in the county jail
18 under this provision shall be separated from adults who are
19 confined in the county jail in such a manner that there will be
20 no contact by sight, sound or otherwise between the juvenile
21 and adult prisoners.

22 (f) For purposes of appearing in a physical lineup, the
23 minor may be taken to a county jail or municipal lockup under
24 the direct and constant supervision of a juvenile police
25 officer. During such time as is necessary to conduct a lineup,
26 and while supervised by a juvenile police officer, the sight

1 and sound separation provisions shall not apply.

2 (g) For purposes of processing a minor, the minor may be
3 taken to a County Jail or municipal lockup under the direct and
4 constant supervision of a law enforcement officer or
5 correctional officer. During such time as is necessary to
6 process the minor, and while supervised by a law enforcement
7 officer or correctional officer, the sight and sound separation
8 provisions shall not apply.

9 (3) If the probation officer or State's Attorney (or such
10 other public officer designated by the court in a county having
11 3,000,000 or more inhabitants) determines that the minor may be
12 a delinquent minor as described in subsection (3) of Section
13 5-105, and should be retained in custody but does not require
14 physical restriction, the minor may be placed in non-secure
15 custody for up to 40 hours pending a detention hearing.

16 (4) Any minor taken into temporary custody, not requiring
17 secure detention, may, however, be detained in the home of his
18 or her parent or guardian subject to such conditions as the
19 court may impose.

20 (Source: P.A. 93-255, eff. 1-1-04.)

21 (705 ILCS 405/5-740)

22 Sec. 5-740. Placement; legal custody or guardianship.

23 (1) As to a minor adjudged a ward of the court, if the
24 court finds that the minor's home cannot provide the quality of
25 care and level of support and supervision the minor needs at

1 the time and that the removal of the minor from the home is in
2 the minor's and community's best interest for any of the
3 following reasons: (i) the minor is without the care necessary
4 for the minor's well-being through no fault or lack of concern
5 by a parent, guardian, custodian, or other person, or (ii) for
6 the protection of the minor, the court may:

7 (a) place him or her in the custody of a suitable
8 relative or other person;

9 (b) place him or her under the temporary guardianship
10 of a probation officer;

11 (c) commit him or her to an agency for care or
12 placement, except an institution under the authority of the
13 Department of Corrections, the Department of Juvenile
14 Justice or of the Department of Children and Family
15 Services;

16 (d) commit him or her to some licensed training school
17 or industrial school, or

18 (e) commit him or her to any appropriate institution
19 having among its purposes the care of delinquent children,
20 including a child protective facility maintained by a child
21 protection district serving the county from which
22 commitment is made, but not including any institution under
23 the authority of the Department of Corrections, the
24 Department of Juvenile Justice, or of the Department of
25 Children and Family Services. As to any minor adjudged a
26 ward of the court who is determined to need care away from

1 home in placement pursuant to subsection (1) above the
2 court, in accordance with this subsection (1), shall
3 further find that reasonable efforts have been made or
4 that, consistent with the health, safety and best interests
5 of the minor and the community, no efforts reasonably can
6 be made to prevent or eliminate the necessity of removal of
7 the minor from his or her home. The court shall require
8 documentation from the Probation Department as to the
9 reasonable efforts that were made to prevent or eliminate
10 the necessity of removal of the minor from his or her home
11 or the reasons why no efforts reasonably could be made to
12 prevent or eliminate the necessity of removal.

13 In making its findings that it is consistent with the
14 health, safety and best interests of the minor and the
15 community to remove the minor from the home the court shall
16 state in writing the factual basis for the finding of the
17 minor's and community's best interests, and the factual basis
18 supporting its findings that reasonable efforts were made to
19 prevent or eliminate the removal of the minor from his or her
20 home or that no efforts reasonably could be made to prevent or
21 eliminate the removal of the minor from his or her home.

22 If the court finds that the removal of a minor adjudged a
23 ward of the court from his home is in the best interest of the
24 minor and community and the court finds that it is for the
25 protection of the minor, the minor shall not be returned to the
26 parent, custodian, or guardian until the court finds that such

1 placement is no longer necessary for the protection of the
2 minor. ~~If the court finds that the parents, guardian, or legal~~
3 ~~custodian of a minor adjudged a ward of the court are unfit or~~
4 ~~are unable, for some reason other than financial circumstances~~
5 ~~alone, to care for, protect, train or discipline the minor or~~
6 ~~are unwilling to do so, and that appropriate services aimed at~~
7 ~~family preservation and family reunification have been~~
8 ~~unsuccessful in rectifying the conditions which have led to a~~
9 ~~finding of unfitness or inability to care for, protect, train~~
10 ~~or discipline the minor, and that it is in the best interest of~~
11 ~~the minor to take him or her from the custody of his or her~~
12 ~~parents, guardian or custodian, the court may:~~

13 ~~(a) place him or her in the custody of a suitable~~
14 ~~relative or other person;~~

15 ~~(b) place him or her under the guardianship of a~~
16 ~~probation officer;~~

17 ~~(c) commit him or her to an agency for care or~~
18 ~~placement, except an institution under the authority of the~~
19 ~~Department of Corrections or of the Department of Children~~
20 ~~and Family Services;~~

21 ~~(d) commit him or her to some licensed training school~~
22 ~~or industrial school; or~~

23 ~~(e) commit him or her to any appropriate institution~~
24 ~~having among its purposes the care of delinquent children,~~
25 ~~including a child protective facility maintained by a child~~
26 ~~protection district serving the county from which~~

1 ~~commitment is made, but not including any institution under~~
2 ~~the authority of the Department of Corrections or of the~~
3 ~~Department of Children and Family Services.~~

4 (2) When making such placement, the court, wherever
5 possible, shall select a person holding the same religious
6 belief as that of the minor or a private agency controlled by
7 persons of like religious faith of the minor and shall require
8 the Department of Children and Family Services to otherwise
9 comply with Section 7 of the Children and Family Services Act
10 in placing the child. In addition, whenever alternative plans
11 for placement are available, the court shall ascertain and
12 consider, to the extent appropriate in the particular case, the
13 views and preferences of the minor.

14 (3) When a minor is placed with a suitable relative or
15 other person, the court shall appoint him or her the legal
16 custodian or guardian of the person of the minor. When a minor
17 is committed to any agency, the court shall appoint the proper
18 officer or representative of the proper officer as legal
19 custodian or guardian of the person of the minor. Legal
20 custodians and guardians of the person of the minor have the
21 respective rights and duties set forth in subsection (9) of
22 Section 5-105 except as otherwise provided by order of court;
23 but no guardian of the person may consent to adoption of the
24 minor. An agency whose representative is appointed guardian of
25 the person or legal custodian of the minor may place him or her
26 in any child care facility, but the facility must be licensed

1 under the Child Care Act of 1969 or have been approved by the
2 Department of Children and Family Services as meeting the
3 standards established for such licensing. Like authority and
4 restrictions shall be conferred by the court upon any probation
5 officer who has been appointed guardian of the person of a
6 minor.

7 (4) No placement by any probation officer or agency whose
8 representative is appointed guardian of the person or legal
9 custodian of a minor may be made in any out of State child care
10 facility unless it complies with the Interstate Compact on the
11 Placement of Children.

12 (5) The clerk of the court shall issue to the guardian or
13 legal custodian of the person a certified copy of the order of
14 court, as proof of his or her authority. No other process is
15 necessary as authority for the keeping of the minor.

16 (6) Legal custody or guardianship granted under this
17 Section continues until the court otherwise directs, but not
18 after the minor reaches the age of 21 years except as set forth
19 in Section 5-750.

20 (7) Whenever a minor is removed from home and placed in
21 foster care or other residential placement and the county will
22 be responsible for the costs of such placement under Section
23 6-7 of this Act, then the Court shall order that the Probation
24 Department shall be responsible for the child's placement,
25 care, and control until such time as the Court finds that such
26 placement is no longer required.

1 (Source: P.A. 90-590, eff. 1-1-99.)